

From: Nancy Dorgan [ndorgan@waypoint.com]

Sent: Wednesday, March 22, 2006 9:16 PM

To: Rushton, Doug

Cc: Karen Allston; Marti, Jeff (ECY); Wiatrak, Phil (ECY); Stohr, Joe; Klocke, Karen (DOH); Hudson, Jim (DOH); Peter, Marie; David Johnson

Subject: Comments on 90.03.386(2) - Muni, Service Area Approvals, and Place of Use...and Marrowstone

Attachments: Comment Draft - Section%205_2_%20Document2172006.pdf

Doug,

The RCW section of 90.03.386(2) that is the subject of DOE's attached draft Q&A briefly refers to the Public Water System Coordination Act RCW 70.116:

90.03.386(2): *"The effect of the department of health's approval of a planning or engineering document that describes a municipal water supplier's service area under chapter 43.20 RCW, or the local legislative authority's approval of service area boundaries in accordance with procedures adopted pursuant to chapter **70.116** RCW, is that the place of use of a surface water right or ground water right used by the supplier includes any portion of the approved service area that was not previously within the place of use for the water right if the supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water conservation, and the alteration of the place of use is not inconsistent, regarding an area added to the place of use, with: Any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county; or any watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after the effective date of this section, if such a watershed plan has been approved for the area.*

The 70.116 requirement for local legislative approval of service area boundaries underlined above is also in the 70.116 WAC's:

WAC 246-293-250 -- Service Area Agreements - Requirement:

"(1) The service area boundaries of public water systems within the critical water supply service area shall be determined by written agreement among the respective existing purveyors and approved by the appropriate legislative authority(ies)."

However, your "Muni" Q&A on service area approvals ignores the 70.116 service area approval process and deals only with DOH's approval in the Water System Plan (WSP) context. In those areas designated as a Critical Water Supply Service Area (CWSSA), municipal purveyors are not allowed to determine their service areas with only DOH/WSP approval. That's the whole point of "Coordinated". Instead, 70.116 above specifically requires service area approval by "*local legislative authority(ies)*". This approval may be as simple as a 60-day "no response" automatic approval, but that review is nevertheless "shall" occur prior to DOH approval of the CWSP/WSP amendments.

Here in Jefferson County, however, a very controversial new service area involving an out-of-basin transfer supply via a supplemental (only) Quilcene surface water right was approved for Marrowstone Island, eluding the requirements of 70.116. DOH approved that future service area map as part of their review of the PUD's WSP update, but without our local legislative authority (BOCC) ever having been given the map to review and approve in the CWSP context. I verified my personal observations with a records request to the Clerk of the the Jefferson County Board of Commissioners.

Instead of following the legal requirements of 70.116, in April 2004 the Marrowstone map was only reviewed and approved by the County's Water Utilities Coordinating Committee and then forwarded by WUCC-chair directly to DOH for approval. DOH subsequently requested that the revised service area map be included in the County's long-pending CWSP update, which has not yet been completed and appears to have stalled out permanently. Meanwhile, on the basis of the approved future service area map now in the PUD's WSP, the PUD has requested county approval of construction permits for the new Marrowstone system.

The CWSP process locally was not in compliance with State law, but the Marrowstone example also shows a major loophole in the administration of 70.116 that is not yet recognized in your Muni Q&A. A simple reference to 70.116 won't fix a deeper problem, which needs to be recognized and hopefully resolved with better coordination requirements under Muni for joint CWSP/WSP service area approvals.

If needed, I can provide you with any further details on the process used for the Marrowstone service area approval.

Thank you for your consideration of my comments.

Nancy Dorgan
Olympic Environmental Council